IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22006 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHISH J BHAVSAR - Petitioner(s)

Versus

COLLECTOR & 2 - Respondent(s)

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Appearance :

MS ROMA I FIDELIS for Petitioner(s) : 1,
MS ARCHANA RAVAL ASST GOVERNMENT PLEADER for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 03/02/2006

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, order and / or direction

directing the respondents to refund the amount of Rs.52,000/- which the petitioner has made towards the registration of the Flat being C-318, Sabari Apartment, Nehru Park, Vastrapur, Ahmedabad. It is the contention on behalf of the petitioner that the petitioner was the owner of one flat Shikhar Apartment being C-61, Satellite, Ahmedabad and the said Shikhar Apartment had collapsed in the earthquake which took place on 26.1.2001 and the flat of the petitioner was collapsed and destroyed. It is the contention on behalf of the petitioner that to give certain benefits to the earthquake affected persons, the State Government has implemented various schemes for rehabilitation wherein one of such schemes was meant to give stamp duty exemption for the earthquake affected persons who purchase the residential accommodation. According to the petitioner as per the scheme, a certificate certifying that the person is a victim of earthquake and is eligible for above relief was to be obtained from the office of the Collector and accordingly, the petitioner applied for the said certificate and the

petitioner was issued the said certificate by City Mamlatdar dated 23.7.2002 certifying that the petitioner is eligible for stamp duty exemption as the petitioner is earthquake affected person. It is the contention on behalf of the petitioner that it is also mentioned in the said certificate that the validity to avail the benefit of the stamp duty exemption is upto 30.9.2002. It is also the case on behalf of the petitioner that on the basis of the said certificate, the petitioner purchased the new flat bearing No.C-318, Sabari Apartment, Nehru Park, Vastrapur, Ahmedabad on 29.8.2002 and the petitioner went to register the aforesaid registered sale deed of the newly purchased flat by approaching the office of the Sub-Registrar, Ahmedabad and presented the stamp duty exemption certificate dated 23.7.2002 and the petitioner was informed by the Sub-registrar that exemption under the said scheme was valid upto 31.3.2002 and therefore, the petitioner was required to pay the stamp duty and the petitioner was compelled to arrange for Rs.52,000/- and again he approached the Sub Registrar on 30.9.2002 to register

the sale deed and accordingly, he paid the stamp duty of Rs.52,000/- on 30.9.2002 which was accepted by the Sub-registrar on 30.9.2002. However, stamp and seal mark for accepting the said sale deed was affixed on 1.10.2002. It is the case of the petitioner that as the petitioner was entitled to exemption from the payment of stamp duty on purchase of the aforesaid flat and the benefit was wrongly not given and the petitioner was required to pay stamp duty of Rs.52,000/-, the petitioner has preferred the present special civil application for refund of the aforesaid amount of Rs.52,000/-

2. Ms.Roma Fidalia, learned advocate appearing on behalf of the petitioner has vehemently submitted that the scheme was extended upto 30.9.2002 and in fact, the document was presented before the Authority on 30.9.2002 and the Sub-Registrar also put his signature on 30.9.2002. However, the stamp dated 1.10.2002 was mentioned and therefore, it is submitted that as the document was presented on 30.9.2002 and the scheme was valid upto 30.9.2002, the petitioner ought to have been given benefit of

the scheme i.e. granting exemption from the payment of stamp duty. It is also further submitted by her that when the Collector Office issued certificate in favour of the petitioner on 23.7.02 certifying that the petitioner is an earthquake affected person and it was also mentioned in the said certificate that validity to avail the benefit of exemption of stamp duty is upto 30.9.2002, and it is not open for the respondent to deny the said benefit as the petitioner has relied upon the same and therefore, it is requested to allow the present Special Civil Application.

3. Ms.Archana Rawal, learned AGP appears on behalf of the respondents and has opposed the present Special Civil Application and has also filed affidavit-in-reply on behalf of the respondents. It is submitted in the said affidavit-in-reply that scheme for stamp duty exemption was valid upto 30.3.2002 and the same was not extended upto 30.9.2002 as alleged and the same was extended only for certain other categories like repayment of loan etc and not with regard to the cases like the

petitioners'. Therefore, it is submitted by her that whether the document was presented on 30.9.2002 or, on 1.10.2002, makes no difference and the scheme was valid only upto 31.3.2002 and hence, it is requested to dismiss the present Special Civil Application.

4. Heard the learned advocates appearing on behalf of the parties.

5. It is the contention on behalf of the petitioner that the scheme for exemption from payment of stamp duty with regard to earthquake affected persons came to be extended upto 30.9.2002. However, on going through the various documents and notifications, it is clear that the cases like the petitioners', the scheme was only 31.3.2002 and the same was not extended. It is borne out from the record that by Resolution dated 8.5.2001, the State Government floated the scheme for earthquake affected persons and earthquake affected persons who purchase the residential house or flat was exempted from the payment of stamp duty upto 31.3.2002 and the benefit was available only upto the amount of market value of

Rs.3.00 lakhs of the residential property and subsequently, vide Resolution dated 20.9.2001, the limit of Rs.3.00 lakhs was enhanced upto Rs.6.00 Lakh and thereafter, vide order dated 29.4.2002 issued by the Government of Gujarat, time limit for implementation of the scheme came to be extended upto 30.9.2002 with rider that the same will apply to the instruments created for repayment of loan, advances, mortgage deed etc. i.e. on any document by which the charge is created and with respect to the other categories, the scheme was not extended. Under the circumstances, when the scheme itself has come to an end on 31.3.2002, whether the document in question was presented before the Sub-Registrar on 30.9.2002 or 1.10.2002 makes no difference as on neither of the dates the petitioner was entitled to exemption from the payment of stamp duty.

6. So far as the contention on behalf of the petitioner that in view of the certificate issued by the Collector Office certifying that the petitioner is earthquake affected person and the scheme has been extended upto 30.9.2002 and therefore, the benefit

should be given to the petitioner is concerned, it is now not disputed by the learned advocate for the petitioner that the scheme was valid upto 31.3.2002 only for the cases like the petitioner and therefore, merely because the Collector Office might have issued certificate, but when the scheme itself is not in existence and has come to an end on 31.3.2002, merely on the basis of the said certificate issued by the Mamlatdar and/or Collector Office, the petitioner cannot claim any right on the basis of the said certificate when the scheme itself is not in existence. Under the circumstances, the contention on behalf of the petitioner cannot be accepted.

7. In view of the above, more particularly, when the scheme itself has expired on 31.3.2002 and the petitioner presented the document on 30.9.2002 or on 1.10.2002 makes no difference and therefore, this Court is not required to decide the controversy whether the document was presented on 30.9.2002 or 1.10.2002, as as stated hereinabove as the scheme has already come to an end on 31.3.2002 and therefore, the petitioner was not entitled to exemption for

payment of stamp duty and hence, the prayer of the petitioner to refund the amount of Rs.52,000/- cannot be granted.

8. For the reasons stated above, the petition fails and same stands dismissed accordingly. Rule is discharged. However, there shall be no order as to costs.

[M.R.Shah, J.]

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